



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. .. of 2019)

**THE KENYA NATIONAL MINING INSTITUTE
BILL**

Dated
JUNE 2019

THE KENYA NATIONAL MINING INSTITUTE BILL, 2019

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THE KENYA NATIONAL MINING INSTITUTE BILL, 2019

A Bill for

AN ACT of Parliament to establish the Kenya National Mining Institute for its incorporation, powers and functions, and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I —PRELIMINARY

Short title.

1. This Act may be cited as the Kenya National Mining Institute Bill, 2019, and shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint, and different dates may be appointed for the coming into force of different provisions.

Interpretation

2. In this Act, unless the context otherwise requires—

“Council means the Governing Council of the Institute established under

“Chairperson” means the Chairperson of the Council appointed and designated as such under ;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Mining;

“Tertiary training” means a training leading to an award of a certificate below degree.

“skills development board means skills development board of the Institute centres;

“Student” shall include both long term and short term participants

PART II- ADMINISTRATION.

Establishment
of Kenya
National
Mining
Institute

3. Establishment of the Institute.

- (1) There is established an Institute to be known as the Kenya National Mining Institute
- (2) The Institute shall be a state corporate Headquarters in Nairobi, shall have centres in various parts of the country
- (3) The Institute shall be under Cabinet Secretary responsible for mining and Principal Secretary responsible for mining
- (4) The Institute shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-
 - (a) Suing and being sued;
 - (b) Purchasing or otherwise acquiring, holding and alienating movable or immovable property; and
 - (c) Borrowing money;
 - (d) Charging for services offered;
 - (e) Entering into contracts, and
 - (f) Subject to the provisions of this Act, of doing or performing all such acts or things as may by law be done or performed by a body corporate.

Functions of
the Institute

4. The functions of the Institute shall be-

- (a) To provide directly or in collaboration with other institutions, services in skills development, consultancy, innovation, research and development in the mining sector on a commercial basis to the public sector National government, County government and state corporations, the private sector, local or foreign, who may require such services from the institute;
- (b) To develop skills-based training curriculum for tertiary training in collaboration with relevant government bodies for the professions in the mining sector including Core-drilling, rock blasting, exploration mining, cartography, instrumentation, mineral value addition, mining haul track operator ,

mining supervisor safety, mine safety training, diploma in mining engineering, engineering certificate, certificate in mining studies, trade in the mining industry, certificate in drilling and blasting, mining apprenticeship , mine production and information technology, fire service training, electronics course for mining technicians, automotive service technician for mining equipment and diploma in surface mining.

- (c) To provide training programmes, seminars, and workshops and produce manuals aimed at maintaining standards in the mining sector;
- (d) To provide a forum for effective training collaboration between the public and private sectors and other interested parties for the development of the mining sector; and
- (e) To conduct examinations and award professional certificates of the courses listed in (b) to successful candidates.
- (f) To offer accreditation to various cadres in the mining sectors.

(2) Admission of candidates to the Institute shall be open to all persons accepted as qualified for such admission without discrimination on the basis of race, ethnic origin, gender, sex, disability status or creed being imposed on any person as a condition of becoming or continuing to be a student at the Institute.

The
Governing
Council of
the Institute

5. The Governing Council of the Institute-

- (1) There shall be a Governing Council of the institute which shall consist of-
 - (a) A Chairperson appointed by the President;
 - (b) The principal secretary to the responsible for finance or a representative appointed in writing;
 - (c) The Principal Secretary responsible for mining or a representative appointed in writing;
 - (d) The Chief Executive Officer of the Institute, who

- shall be secretary;
- (e) Three representatives of public universities offering mining related programmes who shall be appointed on a yearly rotational basis on the advice of the said universities;
 - (f) The following persons who shall be appointed by the Cabinet Secretary;
 - (i) One representative from the private sector mining associations;
 - (ii) One representative of geological professional associations; and
 - (iii) One representative of mining professional associations
- (2) A member of the council, other than an ex-officio member, shall serve for a period not exceeding three years and shall be eligible for reappointment for only one further term.
- (3) A person shall be qualified for appointment as the Chairperson of the Council if that person;
- a) Holds a Degree from a recognized university in geoscience, mining engineering, economics, law or any related qualification.
 - b) Has experience in the mining sector of not less than fifteen years.
 - c) Satisfies the requirements of chapter six of the constitution.
 - d) A person ceases to be a Chairperson if that person-
 - a) Is adjudged bankrupt
 - b) Suffers from physical or mental infirmity which renders him/her incapable of discharging the functions of the council
 - c) Has been convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months.
- (4) A person shall be qualified for appointment as member of the Council if that person;
- e) Holds a master's degree from a recognized

university in geoscience, mining engineering, economics, law or any related qualification.

- f) Has experience in the mining sector of not less than fifteen years.
- g) Satisfies the requirements of chapter six of the constitution.
- h) A person ceases to be a member of the Council if that person-
 - d) Is adjudged bankrupt
 - e) Suffers from physical or mental infirmity which renders him/her incapable of discharging the functions of the council
 - f) Has been convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months.

(5) The office of the member of the Council shall become vacant if -

- (a) The member resigns from the office by writing under his hand addressed to the President or the Cabinet Secretary as the case may be;
- (b) Unable to exercise the functions of his or her office by reason of physical or mental infirmity;
- (c) Adjudged bankrupt by a court of competent jurisdiction;
- (d) Convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (e) Conducts himself or herself in a manner inconsistent with membership of the Council;
- (f) Absent from three consecutive meetings without the permission of the Chairperson; or
- (g) He or she dies.

6 1) Subject to this Act, the governance, control and administration of the Institute shall vest in the Council.

2) Without prejudice to the generality of subsection, the council shall have power to-

- (a) Formulate, with the approval of the Cabinet Secretary policies pertaining to the organization, management and implementation of the objects of the institute;

- (b) Offer required leadership and oversee plan and programmes of the institute and administer the human resource, assets and funds of the institute in such manner and for such purposes as shall best promote the interests of the institute;
 - (c) Charge or dispose of the immovable property of the institute subject to the approval of the Cabinet Secretary in charge of mining, Cabinet Secretary in charge of Ministry responsible for finance and National Land Commission (NLC) as the case might be;
 - (d) Receive, on behalf of the Institute, donations, endorsement, gifts, grants or other monies and to make legitimate disbursements therefrom;
 - (e) Borrow, generate and raise funds for the purposes of the Institute;
 - (f) Appoint suitable staff for the Institute upon such terms and conditions as it may determine in consultation with the relevant government agencies;
 - (g) Receive reports from the Chief Executive Officer or any officer of the Institute in respect of financial and other circumstances of the Institute and to direct any action to be taken by the Chief Executive Officer or any officer of the Institute; and
 - (h) Perform any other function for the better carrying out of the purpose of this Act.
- 3) a) The business and affairs of the council shall be conducted in accordance with schedule one.
b) except as provided in this act the Council shall regulate its own procedure
- c) the council may permit any other person to attend its meetings and participate in its deliberation but that person shall not participate in the making of its decisions.
- 6 1) A person shall be qualified for appointment as Chief Executive Officer if such person;
- a) Is a citizen of Kenya;

Chief
Executive
Officer of the
Institute

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- b) Holds a master's degree from a recognized university in geoscience, mining engineering, economics, law or any related qualification.
- c) Has experience in the mining sector of not less than ten years.
- d) Is a member in good standing of the relevant professional association.
- e) Meets the requirements of chapter 6 of the constitution.
- f) Has not been convicted of an offence with a term of imprisonment.

2) The Chief Executive Officer shall be appointed by the Governing Council for a term of 5 years renewable only once.

(3) The Chief Executive Officer shall be an ex-officio member of the Council but shall have no right to vote at any meetings of the Council.

Staff of the
Institute

7) The council may employ such staff as it deems necessary for the efficient discharge of the functions of the institute, upon such terms and conditions of service as the council may determine in consultation with relevant government agencies.

Establishment
of Centres

8 (1) The institute may establish Training Centres in any part of Kenya for the better discharge of its functions and responsibilities under this Act.

Appointment
of Director of
the Training
Centre

9 (1) There shall be a Director of the Training Centre, who shall be competitively recruited by the Council.

(2) The Director shall be:

- a) The manager of the training centre
- b) Responsible for the day to day management of the Centre
- c) Be responsible for the supervision of the all staff of the Centre, including the maintenance of discipline among the staff;
- d) Appoint such temporary professional and other staff as may from time to time be required by the Centre at such fee as may be directed and approved by the

Skills development board;

- 3) A person shall be qualified for appointment as director if that person-
- a) Holds a master's degree from a recognized university in geology, geophysics, mining engineering, social sciences, economics, geoscience, law or any relevant discipline.
 - b) Has at least ten years relevant experience in public or private sector with proven capacity in training, management and administration.
 - c) Meets the requirements of chapter six of the constitution.
 - d) The Director shall be employed by the board upon such terms and conditions as the board may determine in consultation with relevant government agencies.
 - e) The director shall be employed for a period of five years renewable once upon satisfactory performance.
 - f) Except as otherwise expressly provided under this Act, the Director shall be subject to any special or general directions of the board.

Skills
Development
Board

- 10 1) There shall be established a Skills Development Board of the Institute in each of the Training Centres which shall consist of-
- (a) Director
 - (b) Deputy Director; and
 - (c) Heads of department of the centre.
 - (d) Staff of supportive disciplines
- 2) The skills development board may co-opt such other members as may be necessary for the exercise of its functions of their Centre under this Act.
- 3) The skills development board shall
- a) Set and review the content and standard of skills development programmes of the Centre;
 - b) Establish standards for and evaluate the quality of the training programmes of the Centre;
 - c) Set examinations and award professional certificates to qualified practitioners; and
 - d) Co-ordinate such other activities as may be

undertaken by the Centre in the discharge of its functions under this Act.

- e) Offer required leadership and oversee plan and programmes of the center and administer the human resource, assets and funds of the center in such manner and for such purposes as shall best promote the interests of the center.
- f) Receive, on behalf of the center, donations, endorsement, gifts, grants or other monies and to make legitimate disbursements therefrom;
- g) Borrow, generate and raise funds for the purposes of the center;
- h) Appoint suitable staff for the center upon such terms and conditions as it may determine in consultation with the relevant government agencies;
- i) Receive reports from the Director or any officer of the center in respect of financial and other circumstances of the center and to direct any action to be taken by the Director or any officer of the center; and
- j) Perform any other function for the better carrying out of the purpose of this Act.

4) Conduct of the Business and Affairs of the Board

- a) The business and affairs of the council shall be conducted in accordance with schedule one.
- b) except as provided in this act the board shall regulate its own procedure
- c) the board may permit any other person to attend its meetings and participate in its deliberation but that person shall not participate in the making of its decisions.

Protection of
Name and
Intellectual
Property

11 1) The Kenya Mining Institute shall apply for patenting of its innovations, trade names, drawings, logos, inventions, trademarks, programmes, physical units and copyrights from the Kenya Industrial Property Institute using the formalities procedure for patent applications. The applications shall be in accordance Industrial Property Act 2001, Copy Right Act

2001 and the Industrial Property Regulations 2002. The procedure for making such applications is contained in the guidelines for examination of patents, utility models and industrial designs 2007.

2) No public officer performing functions relating to registration of companies and business names shall accept for such registration any name which includes the words “National Mining Institute” together with the word “Kenya” unless the application for the registration is accompanied by the written consent of the Council;

- a) Any person who, except with the written consent of the Council, uses the words “National Mining Institute” together with the word “Kenya” in furtherance of, or as, or in connection with, any advertisement for any trade, business, calling or profession, commits an offence and is liable on conviction to-
- i. Imprisonment for a term not exceeding thirty six months; or
 - ii. A fine not exceeding ten million shillings; or
 - iii. Both such fine and imprisonment.

3) Provided that nothing in this section shall be construed as preventing the *bona fide* use by any person of any title consequent to the grant to him of a professional certificate or any other award of the Institute.

Funds of the
Institute

PART III – FINANCIAL PROVISIONS

12. The funds and financial assets of the institute shall be:

- a) Such monies as may be appropriated by parliament for the purposes of the institute;
- b) Any monies or property which may in any manner accrue or vest in the Institute in the course of the exercise of this functions under this Act or any other written law;
- c) Such monies as may become payable to the institute by way of fees in respect of services rendered by or through the institute; and

Financial year

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- Annual
Estimates
- d) All monies lawfully provided or donated or lent to the institute.
13. The financial year of the institute shall be the period of twelve months ending on the 30th June in every year.
14. 1) The annual estimates shall be prepared in accordance with the Public Finance Management Act 2012.
- 2) The annual estimates shall make provision for all the estimated expenditure of the institute for the financial year concerned and in particular shall provide for-
- (a) The payment of salaries, allowances and other charges in respect of the staff of the institute and the members of the council;
- (b) The payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the council;
- (c) The acquisition, maintenance, repair and replacement of the equipment and other movable property of the institute; and
- (d) The creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the council may deem fit.
- Accounts and
Audit
15. 1) The council shall cause to be kept proper books and records of account of the income, expenditure and assets of the Institute.
- 2) The books and records of accounts, income, expenditure and liabilities of the institute shall be kept in accordance with Public Finance Management Act 2012.
- 3) The accounts of the institute shall be audited and reported on in accordance with the provisions of article 226 and 229 of the Constitution, Public Finance Management Act, 2012 and the Public Audit Act 2015 (No. 35 of 2015)
- 4) Within three months after the end of the financial year the Accounting Officer of the Ministry, shall submit to

the Auditor-General or an auditor appointed under subsection (4) the accounts of the institute with respect of the financial year to be audited and reported on. The accounts of the institute shall be submitted together with:

- (a) A statement of income and expenditure during that year; and
- (b) A statement of the current asset and liabilities of the institute.

5) The accounts of the institute shall be audited by the Auditor-General or an auditor appointed by the Council with the approval of the Cabinet Secretary in concurrence with the Auditor-General

Common seal

6) The Audit reports of the institute shall include Accounts and Audit of the training Centres as the procedures laid in section 14 above.

PART IV – MISCELLANEOUS PROVISIONS

16. 1) Subject to this section, the common seal of the institute shall be kept in the custody of the CEO or such other person as the council may direct, and shall not be used except upon the order of the council.

2) The common seal of the Institute shall be authenticated by the signature of the chairperson and the CEO.

Signing of documents

3) The common seal of the institute, when affixed to any document and duly authenticated under this section, shall be judicially noticed, and unless the contrary is proved, the necessary order or authorisation of the Council under this section shall be deemed to have been duly given.

Statutes

17. All documents other than those required by law to be under seal made on behalf of the Council shall be signed by chairperson of the council, the CEO, or any other member of the council specifically authorised by the Council in that behalf.

18. 1) In the performance of its functions under this Act, the Council shall make statutes generally for the administration of the Institute, and in particular for-

- (a) The establishment of Centres of the Institute;
 - (b) The requirements for the award of certificates or other awards of the institute;
 - (c) The conduct of examinations;
 - (d) Prescribing fees, boarding and other charges;
 - (e) Prescribing the terms and conditions of service, including the appointment, discipline, dismissal and retirement benefits of the officers of the Institute;
 - (f) The procedure of meetings of the Council and establishment, composition and terms of reference of the Committees of the Council.
 - (g) Mode of collaboration with relevant institutions.
- 2) Statutes shall be made by a resolution made at a meeting of the Council and passed by a majority of the members present and voting.

SCHEDULE 1(section 9)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. The council shall meet at least once every four months in any financial year for the dispatch of its business
2. A meeting of the Council shall be held on a date and at a time as the Council may determine
3. the Chairperson shall, on the written application of at least one third of the members of the Council, convene a special meeting of the Council
4. Unless a majority of the members of the Council otherwise agree, at least fourteen days notice shall be given to each member of the Council in relation to convening of a meeting of the Council
5. The quorum for the conduct of business at the meeting of the Council shall be five members

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6. despite the provisions of paragraph 5, a meeting of the Council shall not be invalid merely because of a vacancy among the members of the Council
7. The decisions of the Council shall be by concurrence of the members present but where concurrence is not achieved, decisions shall be by a majority of members present by voting
8. all instruments made by, and the decisions of, the Council shall be signified in writing under the hand of the Chairperson and Secretary save as may be provided for under any other written law
9. the Council may co-opt any person to attend and deliberate at its meetings if that person's knowledge and skill are necessary for the purposes of this Act
10. a person who has been co-opted to attend and deliberate at the meetings of this Council shall not have a right to vote at the meeting